

No. 397.

FILED  
DEC. 13 1897  
JAMES H. MCKENNEY  
Clerk

Motion to advance.

Filed Dec. 13, 1897.

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Supreme Court of the United States.

OCTOBER TERM, 1897.

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A. J. SELVESTER,  
*Plaintiff in Error,*  
vs.  
THE UNITED STATES. } No. 397.

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IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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ARTHUR ENGLISH,  
*Counsel.*

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## STATEMENT.

On October 26, 1894, James Selvester was indicted by the United States Grand Jury at San Francisco, California, for the Northern District of California.

The indictment found by this grand jury contained four counts. The first count charged the accused with having in his possession three pieces of false, forged and counterfeit coins, of the resemblance and similitude of the fifty-cent piece of the United States. The second count, with uttering two counterfeit fifty-cent pieces. The third count, with uttering three counterfeit fifty-cent pieces. The fourth count, with making five counterfeit fifty-cent pieces.

On May 18, 1896, the accused was placed on trial to answer the indictment. After hearing the whole case, the

jury retired on May 19, 1896, to pass upon and respond to the issues submitted to it.

On the same day but subsequently, the jury returned into court and announced that it was unable to agree, but stated that it agreed on the first three counts of the indictment, but could not agree on the fourth count, and asked the court if it could return such a verdict. The court informed them they could, and the District Attorney then asked leave of the court to enter a *nolle prosequi* as to the fourth count, to which motion the counsel for the defendant objected, and upon such objection the District Attorney withdrew his said motion and the jury then, without retiring, drew up and signed the following as their verdict :

"We, the jury, find James Selvester, the prisoner at the bar, guilty on the first, second and third counts of the indictment, and disagree on the fourth count of the indictment."

The court, despite defendant's objection and exception, received said verdict and caused the same to be recorded, and the jury was then discharged.

On June 1, 1896, the prisoner being in open court, on motion of the United States District Attorney, was called for sentence. The attorney for the defendant moved the court in arrest of judgment on the ground that the verdict was incomplete. This motion was by the court denied. The defendant, by his attorney, duly excepted.

The attorney for the defendant then moved to set aside the verdict on the ground that the same was incomplete. This motion was denied, and the defendant duly excepted.

Attorney for the defendant then moved for a new trial. This motion was denied, and the defendant duly excepted.

The court then adjudged that the defendant stood convicted, and sentenced him to pay a fine of one thousand dollars and be imprisoned for the term of ten years at hard

labor, and in default of the payment of said fine of a thousand dollars that he be further imprisoned until said fine be paid or until he be otherwise discharged by due process of law.

On July 8, 1896, the defendant filed a petition for a writ of error and the same was allowed and citation issued on the same date.

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MOTION.

Now comes the appellant, A. J. Selvester, by his counsel Arthur English, and moves this Honorable Court to advance the above-entitled cause, the same being No. 397 on the docket and fix a day and date for argument of the same and consider the same at the earliest day possible.

And as reasons for this motion the appellant assigns that he is now in jail and has been since the 11th day of July, 1896. That he believes that he is unjustly and illegally detained and imprisoned because of the invalidity of the verdict upon which his sentence was based, and that if afforded an early hearing by this Honorable Court he can establish his right to a new trial.

Respectfully submitted,

A. J. SELVESTER,

By ARTHUR ENGLISH,

*Counsel.*